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Mailed: 5-17-07  
In re application of :  
Kobayashi et al. : DECISION ON  
Serial No. 10/662,340 : PETITION  
Filed: September 16, 2003 :  
For: ELECTROSTATIC CHARGE IMAGE DEVELOPING TONER AND IMAGE  
FORMING APPARATUS USING THE SAME

This is a decision on the PETITION UNDER 37 CFR 1.181, TO WITHDRAW THE OBJECTION TO THE SPECIFICATION, filed March 12, 2007.

On September 22, 2004, a non-final office action was mailed to applicants. The office action contained an objection to the disclosure, indicating that the sum of the component percentages of the toner material in Example 1 added up to 101%.

A reply to the office action was filed on December 9, 2004. In the reply, applicants amended Example 1 of the specification to change the percentage of styrene-acryl copolymer resin from 85% to 84%, such that the sum of the component percentages of the toner material in Example 1 would add up to 100%.

On July 13, 2005, a final office action was mailed. The examiner stated in the office action that the above amendment to the specification was objected to under 35 USC 132(a) for introducing new matter into the disclosure.

After several iterations of applicant's arguments and examiner's rebuttals on whether or not the December 9, 2004 amendment to the specification contained new matter, on March 12, 2007, the instant petition was filed.

Petitioner has argued that the December 9, 2004 amendment to the specification does not contain new matter and that it would have been apparent to one of ordinary skill in the art that Applicants merely amended the specification to correct a typographical error and did not add new matter to the specification.

## DECISION

A petition must be timely filed, as required in 37 CFR 1.181(f), or as required in a specific statute or regulation. A petition not filed within two (2) months from the action complained of may be dismissed as untimely. The mere filing of a petition will not stay the period for replying to an

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examiner's action that may be running against an application or act as a stay of other proceedings. 37 CFR 1.181(f).

The petition is **DISMISSED**.

*Jacqueline M. Stone*

Jacqueline M. Stone, Director  
Technology Center 1700  
Chemical and Materials Engineering

SCOTT M. TULINO, ESQ.  
MCGINN INTELLECTUAL PROPERTY  
LAW GROUP, PLLC  
8321 OLD COURTHOUSE ROAD  
SUITE 200  
VIENNA, VA 22182-3817